

DOCKET NO. AAN-CV-19-5018016-S	:	SUPERIOR COURT
	:	
SARA DOE PPA JOHN DOE	:	J.D. OF ANSONIA/MILFORD
	:	
v.	:	AT MILFORD
	:	
GOOD CHILD DEVELOPMENT CENTER, INC.	:	
AND TAMMY GOSNEY	:	SEPTEMBER 27, 2019

MOTION TO DISMISS

Pursuant to Connecticut Practice Book § 10-30, the Defendants, Good Child Development Center, Inc. and Tammy Gosney (the “Defendants”), move this Court to dismiss the Plaintiff’s August 1, 2019 complaint (the “Complaint”) for lack of jurisdiction due to insufficient service of process in violation of Connecticut General Statutes Section 52-46(a), which requires process to be returned six days before the return day. The Complaint and Summons both identify September 3, 2019 as the return date. Defendants were not served until September 16, 2019 (Entry No. 107), and return of service was not made to the Court until September 20, 2019 (Entry No. 107), seventeen days after the return date. As such, Defendants were not served until almost two weeks after the return date and process was not and could not be returned to court within the mandated statutory deadline.

WHEREFORE, Defendants respectfully move this Court to dismiss the Complaint in its entirety.

THE DEFENDANTS
GOOD CHILD DEVELOPMENT
CENTER, INC. AND TAMMY GOSNEY

BY: /s/ Michael P. Thompson

Michael P. Thompson (#404749)
Gordon & Rees Scully Mansukhani
95 Glastonbury Boulevard, Suite 206
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CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on September 27, 2019 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

Brooke A. Goff, Esq.
Goff Law Group
190 Trumbull, Floor 4
Hartford, CT 06103
Efile@gofflawgroup.net

/s/ Michael P. Thompson
Michael P. Thompson

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Pursuant to Practice Book § 10-30 *et seq.*, the Defendants, Good Child Development Center, Inc. and Tammy Gosney, (the “Defendants”), by and through undersigned counsel, submit their Memorandum of Law in support of its Motion to Dismiss.

I. STATEMENT OF RELEVANT FACTS

The plaintiff’s summons and complaint are dated, August 1, 2019. [A copy of the summons and complaint are attached hereto as Exhibit A]. Both list September 3, 2019 as the “Return Date.” On or about August 5, 2019, Plaintiff filed the complaint with the Court and subsequently filed ex parte applications seeking the temporary use of a pseudonym for herself and her minor child until a full hearing on the issue could take place. On September 20, 2019 (Entry No. 107), the plaintiff filed her return of service with the Court, indicating that service had been made on both Defendants on September 16, 2019.

II. LEGAL STANDARD FOR MOTION TO DISMISS

A Motion to Dismiss tests, *inter alia*, whether, on the face of the record, the court is without jurisdiction. Upson v. State, 190 Conn. 622, 624 (1983). A motion to dismiss is properly used to assert insufficient service of process. Practice Book 10-30(a). The motion to dismiss ... admits all facts which are well pleaded, invokes the existing record and must be decided upon that alone ... Ferreira v. Pringle, 255 Conn. 330, 346-47 (2001).

It is well settled that when a particular method of serving process is governed by statute, “that method must be followed ... Unless service of process is made as the statute prescribes, the court to which it is returnable does not acquire jurisdiction ... Failure to comply with the statutory requirements of service renders a complaint subject to a motion to dismiss on the ground of lack of personal jurisdiction ... Facts showing the service of process in time, form, and manner sufficient to satisfy the requirements of mandatory statutes in that regard are essential to jurisdiction over the person.” Morgan v. Hartford Hospital, 301 Conn. 308, 400 01 (2011) (citation and internal quotation marks omitted). As discussed below, the Plaintiff failed to adhere to the mandatory requirements of 52-72(b), and, as a result, the Complaint should be dismissed.

III. ARGUMENT

A. Plaintiff Failed to Comply with General Statutes § 52-42a.

Connecticut General Statutes § 52-42a requires that process in civil actions be returnable to the clerk of the Superior Court “at least six days before the return day.” Connecticut courts make clear that the requirement of § 52-46a is mandatory and failure to comply renders the proceeding voidable, rather than void, and subject to abatement. *Rogozinski v. American Food Service Equipment Corp.*, 211 Conn. 431, 433, 559 A.2d 1110 (1989). Moreover, “once an action has been brought by service of process on the defendant, a trial court may thereafter dismiss the action for failure to return the service of process within the mandated time period.” *Rana v. Ritacco*, 236 Conn. 330, 339, 672 A.2d 946 (1996).

In the present case, the Complaint lists the return date as September 3, 2019. Connecticut State Marshal Robert Miller made service on both Defendants thirteen days later, on September 16, and service of process was returned to the court on September 20 2019. (Return of Service, Entry No. 107). However, as noted above, the plain language of Conn. Gen. Stat. § 52-42a requires

return of process at least six days before the return date, or in this case August 28, 2019. Undoubtedly, the process served on September 16, 2019 was defective as the return date had already passed and plaintiff could not and did not return process in the manner statutorily mandated.

Because the Plaintiff's service upon the Defendants was insufficient, and the return of process to the Clerk of the Court occurred seventeen days after the return date and thus in violation of Conn. Gen. Stat. § 52-42a, this Court should dismiss the Complaint for lack of jurisdiction.

III. CONCLUSION

For the foregoing reasons, the Defendants move that this Court dismiss the Plaintiff's Complaint case for insufficient service of process and lack of personal jurisdiction.

**THE DEFENDANTS
GOOD CHILD DEVELOPMENT
CENTER, INC. AND TAMMY GOSNEY**

BY: /s/ Michael P. Thompson
Michael P. Thompson (#404749)
Gordon & Rees Scully Mansukhani
95 Glastonbury Boulevard, Suite 206
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Tele: (860) 494-7504
Fax: (860) 560-0185
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CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on September 27, 2019 to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

Brooke A. Goff, Esq.
Goff Law Group
190 Trumbull, Floor 4
Hartford, CT 06103
Efile@gofflawgroup.net

/s/ Michael P. Thompson
Michael P. Thompson

EXHIBIT A

SUMMONS - CIVIL

JD-CV-1 Rev. 4-16

C.G.S. §§ 51-346, 51-347, 51-349, 51-350, 52-45a,
52-48, 52-259, P.B. §§ 3-1 through 3-21, 8-1, 10-13**See other side for instructions**

- ☐ "X" if amount, legal interest or property in demand, not including interest and costs is less than \$2,500.
- ☒ "X" if amount, legal interest or property in demand, not including interest and costs is \$2,500 or more.
- ☐ "X" if claiming other relief in addition to or in lieu of money or damages.

State of Connecticut

Post Date: 08/06/2019

Pay to: STATE OF CONNECTICUT

SUPERIOR COURT

Docket: CV1950180149 www.jud.ct.gov

Receipt #br: 0512902

Amount: \$360.00



List total: 001 \$360.00

TO: Any proper officer; BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to make due and legal service of this Summons and attached Complaint.

Address of court clerk where writ and other papers shall be filed (Number, street, town and zip code) (C.G.S. §§ 51-346, 51-350)		Telephone number of clerk (with area code)	Return Date (Must be a Tuesday)
Milford Superior Court, 14 West River Street; Milford, Connecticut 06460		(203) 877-4293	SEPTEMBER 3, 2019 Month Day Year
<input checked="" type="checkbox"/> Judicial District <input type="checkbox"/> Housing Session	<input type="checkbox"/> G.A. Number:	At (Town in which writ is returnable) (C.G.S. §§ 51-346, 51-349) MILFORD	Case type code (See list on page 2) Major: T Minor: 90

For the Plaintiff(s) please enter the appearance of:

Name and address of attorney, law firm or plaintiff if self-represented (Number, street, town and zip code) Goff Law Group LLC, 190 Trumbull Street, Floor 4, Hartford, Connecticut 06103		Juris number (to be entered by attorney only) 438704
Telephone number (with area code) (203) 399-0000	Signature of Plaintiff (If self-represented)	

The attorney or law firm appearing for the plaintiff, or the plaintiff if self-represented, agrees to accept papers (service) electronically in this case under Section 10-13 of the Connecticut Practice Book. ☒ Yes ☐ No

Email address for delivery of papers under Section 10-13 (if agreed to)
efile@gofflawgroup.net

Number of Plaintiffs: **1** Number of Defendants: **2** ☐ Form JD-CV-2 attached for additional parties

Parties	Name (Last, First, Middle Initial) and Address of Each party (Number, Street, P.O. Box, Town, State, Zip, Country, if not USA)	
First Plaintiff	Name: Sara Doe ppa John Doe Address:	P-01
Additional Plaintiff	Name: Address:	P-02
First Defendant	Name: Good Child Development Center, Inc. Address: 170 Old Point Road, Milford, CT 06460 c/o Kenneth Stephens, 1 Ann Street, Milford, CT 06460	D-01
Additional Defendant	Name: Gosney, Tammy Address: 846 Milford Point Road, Milford, Connecticut 06460	D-02
Additional Defendant	Name: Address:	D-03
Additional Defendant	Name: Address:	D-04

Notice to Each Defendant

- 1. YOU ARE BEING SUED.** This paper is a Summons in a lawsuit. The complaint attached to these papers states the claims that each plaintiff is making against you in this lawsuit.
- To be notified of further proceedings, you or your attorney must file a form called an "Appearance" with the clerk of the above-named Court at the above Court address on or before the second day after the above Return Date. The Return Date is not a hearing date. You do not have to come to court on the Return Date unless you receive a separate notice telling you to come to court.
- If you or your attorney do not file a written "Appearance" form on time, a judgment may be entered against you by default. The "Appearance" form may be obtained at the Court address above or at www.jud.ct.gov under "Court Forms."
- If you believe that you have insurance that may cover the claim that is being made against you in this lawsuit, you should immediately contact your insurance representative. Other action you may have to take is described in the Connecticut Practice Book which may be found in a superior court law library or on-line at www.jud.ct.gov under "Court Rules."
- If you have questions about the Summons and Complaint, you should talk to an attorney quickly. **The Clerk of Court is not allowed to give advice on legal questions.**

Signed (Sign and "X" proper box)	<input checked="" type="checkbox"/> Commissioner of the Superior Court <input type="checkbox"/> Assistant Clerk	Name of Person Signing at Left Brooke A. Goff, Esq.	Date signed 08/01/2019
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If this Summons is signed by a Clerk:

- The signing has been done so that the Plaintiff(s) will not be denied access to the courts.
- It is the responsibility of the Plaintiff(s) to see that service is made in the manner provided by law.
- The Clerk is not permitted to give any legal advice in connection with any lawsuit.
- The Clerk signing this Summons at the request of the Plaintiff(s) is not responsible in any way for any errors or omissions in the Summons, any allegations contained in the Complaint, or the service of the Summons or Complaint.

For Court Use Only

File Date

AUG - 5

I certify I have read and understand the above:

Signed (Self-Represented Plaintiff)

Date

Docket Number

AA N 21/195018016

Print Form

(Page 1 of 2)

Reset Form

RETURN DATE: SEPTEMBER 3, 2019 : **SUPERIOR COURT**
:
SARA DOE PPA JOHN DOE : **J.D. OF ANSONIA/MILFORD**
:
V. : **AT MILFORD**
:
:

GOOD CHILD DEVELOPMENT CENTER,
INC.; TAMMY GOSNEY : **AUGUST 1, 2019**

REDACTED COMPLAINT

COUNT ONE: (SARA DOE PPA JOHN DOE v. TAMMY GOSNEY- INTENTIONAL ASSAULT)

1. The minor, John Doe, is a resident of Milford, Connecticut.
2. The plaintiff, Sara Doe, is a resident of Milford, Connecticut.
3. The defendant, Good Child Development Center, Inc., was and is a corporation organized and existing under the laws of the State of Connecticut.
4. The defendant, Tammy Gosney, is a resident of Milford, Connecticut.
5. The minor, John Doe, brings this action by and through his legal guardian, Sara Doe.
6. At all times mentioned herein, the defendant, Tammy Gosney, was a pre-school teacher employed by Good Child Developmental Center, Inc. in Milford, Connecticut.
7. At all times mentioned herein, the defendant, Tammy Gosney, was an agent/servant, and/or employee of the defendant, Good Child Developmental Center, Inc.
8. At all times mentioned herein, the minor, John Doe was enrolled at Good Child Development Center, Inc. as a pre-school student in the classroom of Tammy Gosney.

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MILFORD

9. On or about June 27, 2018, the minor was 3 years of age.
10. On or about June 27, 2018, the defendant, Tammy Gosney, in her capacity as pre-school teacher and caretaker for the minor, John Doe, physically abused the minor by dragging him by his arms several feet across the floor of the defendant, Good Child Development Center, Inc. premises and thereafter attempted to manipulate the shoulder/arms of the minor back into socket, all of this while the child agonized in pain.
11. As a result of said physical abuse, the minor has suffered extreme trauma, mental anguish, and psychological injuries, which are permanent in nature.
12. As a further result of said physical abuse, the defendant, Tammy Gosney has disrupted and destroyed forever and for all time the minor's childhood and adolescence.

SECOND COUNT: (SARA DOE PPA JOHN DOE v. TAMMY GOSNEY- RECKLESS AND WANTON ASSAULT)

- 1-12. Paragraphs 1 through 12 of Count One are hereby fully incorporated and made Paragraphs 1 through 12 of this Count Two as if fully set forth herein.
13. The defendant, Tammy Gosney performed said physical assault as described herein in a reckless and wanton manner.
14. As a result of said reckless and wanton physical abuse, the minor has suffered extreme trauma, mental anguish, and psychological injuries, which are permanent in nature.
15. As a further result of said physical abuse, the defendant, Tammy Gosney has disrupted and destroyed forever and for all time the minor's childhood and adolescence.

16. At all times herein mentioned, the defendant, Tammy Gosney acted recklessly and wantonly and with careless disregard for the safety and well-being of the minor plaintiff, and for the likelihood that the minor would suffer severe emotional distress, psychological injuries, mental anguish, and trauma from the acts mentioned above.
17. The defendant, Tammy Gosney's conduct was extreme and outrageous, going beyond all bound of decency in a civilized society, and was a direct and proximate cause of the minor plaintiff's severe emotional distress, mental anguish, psychological trauma and injuries, which are permanent in nature.

COUNT THREE: (SARA DOE PPA JOHN DOE v. GOOD CHILD DEVELOPMENT CENTER, INC.- NEGLIGENCE)

- 1-12. Paragraphs 1 through 12 of Count One are hereby fully incorporated and made Paragraphs 1 through 12 of this Count Three as if fully set forth herein.
13. On or about June 27, 2018, the defendant, Good Child Development Center, Inc., was entrusted to care for the minor as a paid educational institution during the time of said abuse as referenced in Paragraph 10 of Count One.
14. The aforesaid incidents as outlined in Paragraph 10 of Count One above occurred as a result of the negligence and/or carelessness of the defendant, Good Child Development Center, Inc., in one or more of the following respects:
 - a. In that it failed to properly supervise the minor while in its care;
 - b. In that it neglected the minor while in its care;
 - c. In that it allowed an environment to exist whereby the defendant, Tammy Gosney and the minor were alone and unattended for long periods of time;

- d. In that it failed to properly screen and investigate the applicant teachers of its institution before and during the hiring process when doing so likely would have revealed the unsafe and dangerous nature of the defendant, Tammy Gosney toward minor children including, but not limited to, the minor plaintiff;
 - e. In that it failed to provide a safe environment for the minor plaintiff to obtain his education in that it employed and exposed students to dangerous individuals including, but not limited to, the defendant, Tammy Gosney;
 - f. In that it failed to properly monitor the classroom of the defendant, Tammy Gosney, when doing so would have made apparent the inappropriate physical interactions between the defendant, Tammy Gosney and her minor students;
 - g. In that it failed to report the physical abuse exercised by the defendant, Tammy Gosney onto minor students when it knew or should have known that said abuse was occurring within its establishment while the minor was under its custody; and
 - h. In that it failed to alert the parents of the minor students that the defendant, Tammy Gosney, was physically abusing children while under its care when it knew or should have known that said abuse was occurring.
15. As a result of the negligence of the defendant, Good Child Development Center, Inc., the minor has suffered extreme trauma, mental anguish, and psychological injuries, which are permanent in nature.

16. As a result of said negligence of the defendant, Good Child Development Center, Inc., the minor's childhood and adolescence has been disrupted and destroyed forever.

17. As a result of said negligence of the defendant, Good Child Development Center, Inc., the guardian, Sara Doe, has incurred medical bills and has sustained out of pocket expenses for treatment of the minor all to her financial loss.

WHEREFORE, the minor plaintiff claims:

1. Monetary damages;
2. Interest and Costs; and
3. Such other and further relief as the Court may deem fair and equitable.

THE PLAINTIFF,

BY



Brooke A. Goff, Esq.
Goff Law Group LLC
190 Trumbull Street
Floor 4
Hartford, CT 06103
Tel: 203-399-0000
Fax: 203-295-3666
Juris # 438704

RETURN DATE: SEPTEMBER 3, 2019 : **SUPERIOR COURT**
:
SARA DOE PPA JOHN DOE : **J.D. OF ANSONIA/MILFORD**

V. : **AT MILFORD**
:
:
GOOD CHILD DEVELOPMENT CENTER,
INC.; TAMMY GOSNEY : **AUGUST 1, 2019**

STATEMENT OF AMOUNT IN DEMAND

The amount of demand, exclusive of interest and costs is in excess of Fifteen Thousand Dollars (\$15,000).

THE PLAINTIFF,

BY



Brooke A. Goff, Esq.
Goff Law Group LLC
190 Trumbull Street
Floor 4
Hartford, Connecticut 06103
Tel: 203-399-0000
Fax: 203-295-3666
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	:	
	:	
GOOD CHILD DEVELOPMENT CENTER, INC.; TAMMY GOSNEY	:	AUGUST 1, 2019

SUMMONS

To Any Proper Officer:

By authority of the State of Connecticut you are hereby commanded to summon the Defendant in the foregoing action to appear before the Superior Court at a place and time specified in the foregoing order, then and there to show cause why an Application for Permission to Use Pseudonym should not be granted as prayed for in the foregoing Complaint and Application, by serving in the manner provided by statute for the service of process a true and attested copy of the foregoing, Summons, Writ, Complaint, Ex Parte Application, Motion to Seal Affidavit, Motion for Use of Pseudonym, Order and this Summons on the Defendant on or before _____, 2019.

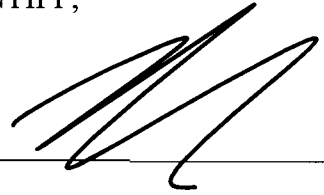
Hereof fail not, but due service and return make.

Dated at Milford on _____, 2019.

2019 AUG -5 AM 11:21
 SUPERIOR COURT
 JUDGE: JUDGE
 CLERK: CLERK

THE PLAINTIFF,

By: _____

A handwritten signature in black ink, appearing to be 'Brooke A. Goff', written over a horizontal line.

Brooke A. Goff, Esq.
Goff Law Group LLC
190 Trumbull Street
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Hartford, Connecticut 06103
Tel No: 203-399-0000
Fax No: 203-295-3666
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